

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re)	
RMS TITANIC, INC., et al.,)	Case No. 3:16-bk-2230-PMG
Debtors.)	Chapter 11
_____)	

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS' OBJECTION TO DEBTORS' MOTION TO
EXTEND EXCLUSIVITY AND RESPONSE TO EQUITY
COMMITTEE'S MOTION TO TERMINATE EXCLUSIVITY**

The Official Committee of Unsecured Creditors (the "Creditors' Committee") of RMS Titanic, Inc. and its debtor affiliates (together, the "Debtors") objects to the Debtors' motion to extend exclusivity by ninety days [ECF No. 382] and responds as follows to the motion of the Official Committee of Equity Security Holders (the "Equity Committee") to terminate exclusivity [ECF No. 380]:

Objection to Debtors' Motion

1. The Debtors' argument that their unsecured creditors would not be prejudiced by the requested exclusivity extension through April 10 is disingenuous, at best:

(a) From the commencement of these cases, the Debtors have been focused almost exclusively on selling select French artifacts to repay their creditors and reorganizing around the balance of the Titanic collection. To date, the Debtors have done little to pursue alternative strategies, such as the sale of the entire Titanic collection,

subject to the Revised Covenants and Conditions (reported at 742 F. Supp. 2d 784). The Debtors have acknowledged as much in their motion. (*See* Debtor Mot. ¶17.b, stating the RFP issued to auction houses solicited proposals “in connection with a potential sale of the French artifacts should the Debtors obtain a favorable outcome in the French Adversary”).¹

(b) The cash collateral budget prepared by the Debtors’ financial advisor and shared with the Creditors’ Committee earlier this month indicates the Debtors are operationally insolvent and are expected to run out of cash in a matter of months absent a DIP loan.

(c) The Debtors have acknowledged that their ability to close on a DIP loan hinges on their obtaining clean title to the French artifacts, which in turn requires that they prevail in the pending adversary proceeding against France, which has yet to occur.

2. Accordingly, unsecured creditors would be prejudiced by an exclusivity extension, as such relief would permit the Debtors to continue to avoid pursuing a dual-track sale process, a strategy both official committees have pressed the Debtors to pursue since September, even though the Debtors’ preferred strategy carries tremendous risks to the success of these cases. The Debtors’ statement that they have received no proposals from any party regarding an alternative strategy (Debtor Mot. ¶¶20, 22) is patently false.

¹ By letter, dated December 23, 2016, the Debtors advised the official committees that the Debtors “fully intend to consult with any auction company ultimately retained on any potential sale of the collection in its entirety,” but to date have done little, if anything, in furtherance of any such sale. Further, the Debtors’ prior communications concerning the RFP process make clear they have no intention of running a dual-track sale process, but instead will only consider a sale of the entire collection after a French artifact sale process is well underway.

3. The Debtors attempt to portray their limited cash resources as a reason to extend exclusivity (Debtor Mot. ¶21), arguing that absent such relief the Debtors will have to pay administrative expenses that they can ill afford associated with another party's potentially proposing a plan that contemplates an alternative strategy.

4. The Debtors' deteriorating cash position, however, weighs against extending exclusivity. The legislative history to section 1121(d) provides "[a]n extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory." S. Rep. No. 989, 95th Cong., 2d Sess. 118 (1978). By arguing, in effect, an extension is needed because the estate cannot afford to pay professionals to pursue an alternative reorganization strategy the Debtors are doing exactly that.

5. Given the foregoing and the advance notice required to obtain disclosure statement approval and plan confirmation under Bankruptcy Rules 2002 and 3017, exclusivity should be terminated now, and the Debtors' motion should therefore be denied.²

Response to Equity Committee's Motion

6. The Creditors' Committee disputes the Equity Committee's position that common stockholders are the "real stakeholders" because "there appears to be ample value at hand to ensure that ... unsecured creditors ... will be paid in full." (Equity Comm. Mot. ¶¶14-15, 25-28.) The Debtors previously stated that if they are unable to

² Alternatively, the Creditors' Committee requests that the Court enter a bridge order extending exclusivity only through January 23, and hold a status conference pursuant to Bankruptcy Code section 105(d)(2)(B) on the Debtors' exclusivity request following consideration of the Debtors' default judgment motion at the January 23 hearing.

promptly consummate their contemplated plan of selling French artifacts and reorganizing around the remainder of the Titanic collection, there is a very real possibility unsecured creditors will not be paid in full. (Oct. 25 Tr. 10:5-24, 23:21-24:11, attached as **Exhibit 1**.) Likewise, unsecured creditors may not be paid in full if the Debtors cannot fund these chapter 11 cases. (See ¶1.b, *supra*; Oct. 25 Tr. 23:11-14, noting the urgency with which the Debtors must emerge from bankruptcy because of the Debtors' financial position.)

7. Nevertheless, the Creditors' Committee does not oppose the relief sought by the Equity Committee (termination of exclusivity solely as to the Equity Committee), provided exclusivity is also terminated as to the Creditors' Committee. The Creditors' Committee has consulted with the Equity Committee, which has consented to the foregoing relief.

WHEREFORE, the Creditors' Committee requests that the Court deny the Debtors' motion and extend the coexclusivity relief sought by the Equity Committee to the Creditors' Committee, and grant such other and further relief as the Court deems appropriate.

Dated: December 28, 2016

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Certificate of Service

I hereby certify that on December 28, 2016, the foregoing pleading was transmitted to the Clerk of the Court for uploading to the Case Management/Electronic Case Files System, which will send a notice of electronic filing to all parties who have consented to receiving electronic notifications in this case. I further certify that on, December 28, 2016, copies of the foregoing were furnished by U.S. Mail, postage prepaid to the following:

417 5th Ave Real Estate, LLC
c/o Sebastian Capital, Inc.
417 Fifth Avenue
New York, NY 10016

A-1 Storage and Crane
2482 197th Avenue
Manchester, IA 52057

ABC Imaging
1155 21st Street NW
Suite M400
Washington, DC 20036

A.N. Deringer, Inc.
PO Box 11349
Succursale Centre-Ville
Montreal, QC H3C 5H1

ATS, Inc.
1900 W. Anaheim Street
Long Beach, CA 90813

Broadway Video
30 Rockefeller Plaza
54th Floor
New York, NY 10112

CBS Outdoor/Outfront Media
185 US Highway 48
Fairfield, NJ 07004

Dentons Canada LLP
250 Howe Street
20th Floor
Vancouver, BC V6C 3R8

Enterprise Rent-A-Car Canada
709 Miner Avenue
Scarborough, ON M1B 6B6

Expedia, Inc.
10190 Covington Cross Drive
Las Vegas, NV 89144

Lange Feng
15953 107th Avenue
Surrey, BC V4N 5N7

George F. Eyde LLC
300 S. Washington Square
Suite 400
Lansing, MI 48933

George Young Company
509 Heron Drive
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Gowling Lafleuer Henderson
550-2300 Burrard Street
Vancouver, BC V6C 2B5

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305 Crosstree Lane
Atlanta, GA 30328

Kirvin Doak Communications
7935 W. Sahara Avenue
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Surrey, BC V3Z 6X2

Morris Visitor Publications
PO Box 1584
Augusta, GA 30903

NASDAQ Stock Market, LLC
805 King Farm Blvd.
Rockville, MD 20850

National Geographic Society
1145 - 17th Avenue NW
Washington, DC 20036

NYC Dept. of Finance
PO Box 3646
New York, NY 10008

NY Dept. of Taxation and Finance
Attn: Office of Counsel
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PO Box 4127
Binghamton, NY 13902

PacBridge Limited Partners
22/F Fung House
19-20 Connaught Road

Central Hong Kong
Pallet Rack Surplus, Inc.
1981 Old Covington Cross Rd NE
Conyers, GA 30013

Ramparts, Inc.
d/b/a Luxor Hotel and Casino
3900 Las Vegas Blvd. South
Las Vegas, NV 89119

Screen Actors Guild
1900 Broadway
5th Floor
New York, NY 10023

Seaventures, Ltd.
5603 Oxford Moor Blvd.
Windemere, FL 34786

Soprintendenza Archeologica
di Napoli e Pompei
Piazza Museo 19
Naples, Italy 80135

Structure Tone, Inc.
770 Broadway
9th Floor
New York, NY 10003

Syzygy3, Inc.
1350 6th Avenue
2nd Floor
New York, NY 10019

Time Out New York
475 Tenth Avenue
12th Floor
New York, NY 10018

TPL
3340 Peachtree Road
Suite 2140
Atlanta, GA 30326

TSX Operating Co.
70 West 40th Street
9th Floor
New York, NY 10018

Verifone, Inc.
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Clearwater, FL 33759

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565 Willow Road
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/s/ Robert A. Heekin, Jr.

Attorney

Exhibit “1”

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC.,
Debtor.

CASE NO: 16-02230-3G1

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: October 25, 2016
TIME: 10:02 a.m. - 10:37 a.m.
PLACE: United States Courthouse
300 North Hogan Street
Courtroom 4A
Jacksonville, Florida 32202

BEFORE: The Honorable Paul M. Glenn
U.S. Bankruptcy Judge

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING
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This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings
were transcribed by:

Cindy Danese, Notary Public
STATEWIDE REPORTING SERVICE
233 East Bay Street, Suite 606
Jacksonville, Florida 32202
(904) 353-7706

1 Would anyone else like to be heard?

2 Mr. Gurfein, Mr. Brown.

3 MR. GURFEIN: Your Honor, Peter Gurfein.

4 That's correct, the Equity Committee supports
5 this motion.

6 THE COURT: Thank you.

7 Mr. Thames?

8 MR. THAMES: Your Honor, on behalf of the
9 Creditors Committee, no objection.

10 THE COURT: And Mr. Bomkamp.

11 MR. BOMKAMP: No objection, Your Honor.

12 THE COURT: Very good. Thank you very much.

13 And so that motion is granted.

14 And, Mr. Blanks, would you prepare an order
15 granting that and review it with those who wish to
16 review it?

17 MR. BLANKS: I will, Your Honor. Thank you
18 very much.

19 And the last item on the calendar for this
20 morning, Your Honor, is the Debtors' motion for an
21 extension of time, exclusivity time to file this
22 plan and solicit votes with respect to that plan.

23 Your Honor, as set forth in the motion, the
24 Debtors request additional time so that they can
25 formulate a plan and solicit votes of

1 reorganization.

2 Your Honor, as set forth in the motion and, as
3 you know, the Court would grant such a motion for
4 cause. The cause is set forth in the motion, but,
5 to supplement that, Your Honor, as Your Honor is
6 very much aware and has been in front of this
7 Court, the Debtors' intention, both stated publicly
8 in this courtroom as well as in filings in this
9 Court, is that we'd like to sell some French
10 artifacts, pay all the creditors in full and have a
11 complete return to equity.

12 Your Honor denied our initial motion with
13 respect to the sale of those French artifacts. We
14 have now initiated an adversary proceeding with
15 respect to the Republic of France -- I think it was
16 a declaratory judgment action -- to say that France
17 does not have any interest in that property.

18 Our stated goal continues to be that we would
19 like to sell a portion of the French artifacts and
20 have a complete return to equity and pay every
21 single creditor in full.

22 We are working -- that is what I'll call Plan
23 A. That is certainly our intention, that is our
24 goal, both publicly and privately, with all the
25 people that are in this room. That is our plan.

1 That's the plan that we set forth almost on the
2 very first day and that continues to be our goal,
3 and we'll be hopefully achieving this
4 reorganization process.

5 If forced, we would follow what we call Plan
6 B. Unfortunately, Plan B, if we're unable to sell
7 the French artifacts and the French artifacts -- we
8 cannot get proper title with respect to those
9 artifacts, unfortunately, at this time, based upon
10 the claims that have been asserted against the
11 estates as well as the stated assets that are
12 listed in our schedules, there would not be a
13 return to equity and, in fact, the creditors would
14 not get paid in full and probably get paid cents on
15 the dollar.

16 And so, if that's the plan that we would have
17 to submit at this particular time, that's what the
18 plan would effectively be.

19 Unfortunately, with the facts as they exist
20 today, if we're unable to sell the French
21 artifacts, there is insufficient amount of assets
22 to pay all the creditors in full, and the Equity
23 Committee and all of its members would be out of
24 the money in that particular instance.

25 We are diligently trying other alternatives

1 and, unlike what is stated in the opposition, we
2 are formulating different plans, we are talking to
3 different people.

4 We have recently filed a motion to retain
5 GlassRatner as our financial advisor. With that
6 financial advisor, we would like to help us to
7 formulate that plan in order to exit bankruptcy,
8 with or without the sale of the French artifacts.

9 The Equity Committee, unfortunately, has filed
10 an opposition to GlassRatner. And so, not only are
11 they frustrating the efforts or are not assisting
12 in the efforts to try to formulate a plan to exit
13 bankruptcy, they are opposing the help the Debtors
14 have requested.

15 Your Honor, so we are diligently trying to
16 formulate a plan.

17 If called to testify, the CFO or the CEO of
18 the company would testify that their stated goal to
19 me as well as the company is to exit Chapter 11 as
20 quickly as possible. They have no desire
21 whatsoever to stay in Chapter 11 a second longer
22 than absolutely necessary.

23 Unfortunately, we are in the circumstance
24 where we are effectively waiting on an adversary
25 proceeding with respect to France before we can

1 effectively formulate a plan of reorganization that
2 would achieve the goals that we've stated publicly
3 in this courtroom, which is to pay all the
4 creditors in full and have a return to equity.

5 I believe that's sufficient cause to grant the
6 relief requested in our motion today.

7 I would like to note that, although styled as
8 an objection to -- or a limited objection to our
9 request for exclusivity, I read through the Equity
10 Committee's objection and I would submit that it's
11 not an actual objection. Although it's styled as a
12 limited objection, I don't believe that they
13 directly say that they would like us not to have
14 exclusivity.

15 I believe that, Your Honor, most of that --
16 most of that opposition is really an opportunity
17 that the Equity Committee took to take a swipe at
18 management and in the objection that they see with
19 the current status of management duties and
20 actions.

21 And, Your Honor, they took a couple of swipes
22 -- at the previous hearing, counsel for the
23 committees took a couple of swipes at management,
24 as you may recall, and I declined to respond in
25 kind. That's not the way I want to litigate. I

1 don't want to litigate this particular motion that
2 way or anything else before Your Honor.

3 But in reading through the objection, I think
4 there's a couple of different agendas that may be
5 at play here, and not just objecting to the relief
6 requested in that motion.

7 And I wanted to point out to Your Honor that
8 members of the Equity Committee may have separate
9 agendas from what is stated -- what they state in
10 the limited objection, which is they may have had
11 previous problems with previous management, as well
12 as this current management, but those -- that
13 distrust or that those problems that they may have
14 had with previous management is not cause to deny
15 the current Debtors' motion to extend exclusivity
16 at this time.

17 And with that, Your Honor, I'll turn the
18 podium over to counsel for the Equity Committee who
19 filed the objection.

20 THE COURT: Thank you.

21 Mr. Gurfein.

22 MR. GURFEIN: Thank you, Your Honor.

23 The Equity Committee is fully cognizant that
24 there's a Bankruptcy Code policy on exclusivity
25 that fosters the opportunity for debtors to

1 THE COURT: Mr. Wainger.

2 MR. WAINGER: Try to find a common ground
3 where we can here, Judge, and it appears that
4 everybody in the courtroom is interested in moving
5 this process forward as quickly as possible. And
6 that is absolutely the goal of the Debtors, and it
7 likewise appears to be the goal of every other
8 constituency here.

9 And a number of the decisions the Debtors have
10 made have been in an effort to expedite this
11 process, some unsuccessfully, but the Debtors have
12 consistently told this Court and will consistently
13 tell this Court that speed is urgent. All we have
14 to do is look at the financials to know that. So I
15 think there is very much common ground there.

16 But I think that we need to be very careful
17 about saying there are a variety of options and
18 that they're only putting their eggs in one basket.

19 Certainly, the Debtors have said publicly that
20 a sale of the artifacts, after careful analysis,
21 appears to be the best solution. When Mr. Thames
22 said there are \$200 million of assets that we can
23 look at for a variety of possibilities, that defies
24 certain restrictions and challenges associated with
25 what we have called the American artifacts and with

1 what we are about to litigate with this Court with
2 regards to the French artifacts.

3 So it's easy to say there's \$200 million
4 dollars of assets, but, when you dig a little bit
5 deeper, we recognize that at some point -- at some
6 point there is some wisdom to what the company is
7 looking to achieve, and I act on what Mr. Blanks
8 said, which is, if the company is not able to
9 achieve that, well, then the Equity Committee, for
10 starters, doesn't really have a seat at the table
11 or any legitimately viable benefits.

12 Having read the 20-page brief, which was
13 pretty direct about their feelings, and having seen
14 the \$100,000 billed in the first month for counsel
15 to the Equity Committee, I see some other issues
16 being at play here, Judge. And most recently I saw
17 a motion to extend the timeline to file claims so
18 that the Equity Committee could explore claims and
19 explore a class action.

20 And so I heard Mr. Gurfein talk about the
21 necessity for the Debtors to engage, and I read
22 that the Debtors have not provided information to
23 the Equity Committee. It's not true. The level of
24 engagement has been substantial.

25 But when we talk about mistrust and agendas,

1 Judge, when the company believes -- when the
2 Debtors believe that the primary agenda of the
3 Equity Committee is to pursue a class action claim
4 against the Equity Committee and use the
5 appointment and use the Debtor's money to develop
6 those claims, well, then there is a bit of caution.

7 So I think it's absolutely appropriate on
8 behalf of the Debtors to exercise that caution,
9 Judge. And so when we look at the intentions of
10 the parties and what's happening here, we're not
11 taking potshots. That's not the way we choose to
12 litigate. But we all need to be clear there's a
13 lot going on here.

14 And so, at the end of the day, Judge, we will
15 honor our obligations as counsel to the Debtors,
16 and, as Debtors, to inform the committees as they
17 need to be informed. We will engage with them. We
18 will help them prepare, as we have done, but we
19 will do so judiciously and cautiously.

20 And the last thing I'll say, Judge, is to
21 attribute malice to a whereas clause in the brief
22 we filed is simply nonsense. We're not looking to
23 create a gotcha moment here.

24 We're asking for what is appropriate, 90 days.
25 And to the extent that detail isn't there, shame on

1 us for not providing that detail. But let's not --
2 let's not go so low as to suggest that that's an
3 intentional action. That's not what we're trying
4 to accomplish here.

5 The Debtors and their counsel respect this
6 process and will continue to do the best they can
7 for all of the constituencies.

8 THE COURT: Thank you. Thank you.

9 Anyone else wish to be heard?

10 MR. GURFEIN: Your Honor, Peter Gurfein, if I
11 may?

12 THE COURT: Certainly.

13 MR. GURFEIN: It's as if it gives on one hand
14 and takes away with the other.

15 We're here today talking about a plan process
16 and we're here today talking about the Chapter 11
17 process. Part of that process requires official
18 committees to fulfill their fiduciary duty to their
19 constituencies, and among those is to determine
20 what the assets of the estate are and to determine
21 whether there are claims, and that is something the
22 committee will do.

23 That in no way detracts from the fact that
24 this is a case with some challenges, and we're
25 Chapter 11 professionals who know how to roll up

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Cindy Danese, a Notary Public, State of Florida at Large, do hereby certify that the foregoing is the official transcript, prepared to the best degree possible from the digital audio recording and logs provided by the Court.

I further certify that I am neither counsel for, nor related to, nor am employee of any of the parties to the action in which this hearing was taken.

I further certify that I have no personal interest in the outcome of the action.

Dated this 14th day of November, 2016, in Duval County, Florida.

STATEWIDE REPORTING SERVICE

Cindy Danese